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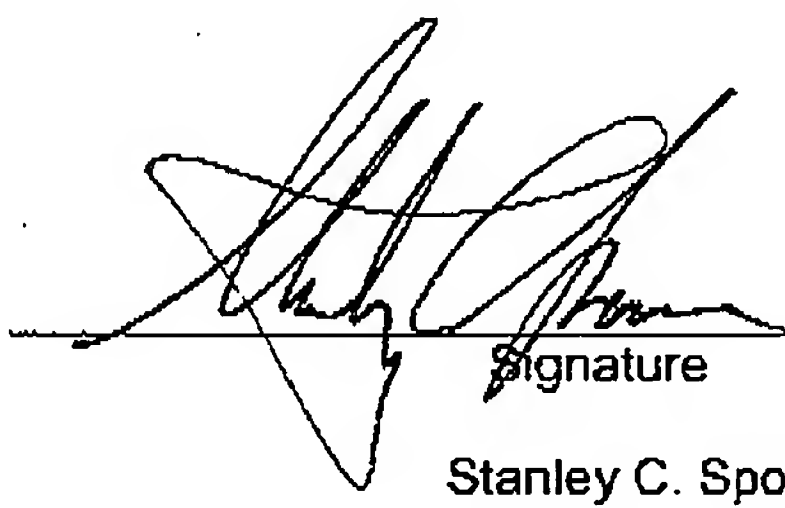
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<b>PRE-APPEAL BRIEF REQUEST FOR REVIEW</b>		<b>Docket Number (Optional)</b>
		<b>SCS-124-1154</b>
Application Number		Filed
10/573,671		March 24, 2006
First Named Inventor		Hill
Art Unit		Examiner
2874		E. Kim
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p>I am the <input type="checkbox"/> Applicant/Inventor <input type="checkbox"/> Assignee of record of the entire interest. See 37 C.F.R. § 3.71. Statement under 37 C.F.R. § 3.73(b) is enclosed. (Form PTO/SB/96) <input checked="" type="checkbox"/> Attorney or agent of record <u>27,393</u> (Reg. No.) <input type="checkbox"/> Attorney or agent acting under 37CFR 1.34. Registration number if acting under 37 C.F.R. § 1.34 _____</p> <p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below.*</p> <p><input checked="" type="checkbox"/> *Total of 1 form/s are submitted.</p>		

  
\_\_\_\_\_  
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April 3, 2008  
Date

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**STATEMENT OF ARGUMENTS IN SUPPORT OF  
PRE-APPEAL BRIEF REQUEST FOR REVIEW**

The following listing of clear errors in the Examiner's rejection and her failure to identify essential elements necessary for a *prima facie* basis of rejection is responsive to the Final Official Action mailed January 4, 2008 (Paper No. 20071126).

**A. Error #1 – The Examiner misreads Applicants' claim language**

The Examiner alleges on page 2 of the Final Rejection that Applicants have failed to establish any definition of "fiber-optic point sensors" and "distributed fiber-optic point sensor" in the claim or the specification (emphasis added). Nowhere in Applicants' claim does the phrase "distributed fiber-optic point sensor" exist and therefore there is no need for any definition of this term. Regarding the definition, in the previously filed Amendment (filed 09/17/07), appellants submitted a photocopy of "Optical Fibre Sensor Technology" having a date of 1999 clearly establishing that "single point measurement" and "distributed measurement" are well known by those of ordinary skill in the art of optical fiber sensor technology. The Amendment also points out that the terms "fibre-optic point sensor" and "distributed fibre-optic sensor" are clearly disclosed in Applicants' specification at page 6, lines 15-20.

The Examiner has misstated the language of Applicants' claims, ignored the knowledge of those having ordinary skill in this art and ignored the examples and definitions contained in Applicants' specification. These errors are believed reversible by the Board.

**B. Error #2 – The Examiner continues to misunderstand the teaching of the Yurek patent**

The Examiner again alleges that Yurek teaches "distributed fiber-optic sensor 10a" and that "the distributed fiber-optic sensor 10a is delivering and pass out optical signal [sic]" (first full paragraph on page 3 of the Final Rejection). The previous Amendment corrected the

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Examiner's misunderstanding by pointing out that Yurek teaches a plurality of point sensor units 30 "separated by a coil delay element 10a" (column 4, lines 12-20). Thus, the Examiner is aware that item 10a in Yurek cannot be a "distributed fibre-optic sensor" because it is clearly labelled a "coil delay element 10a." The Examiner's failure to read the plain language of the Yurek reference is clearly reversible error.

**C. Error #3 – The Examiner fails to provide any support for her position, even when formally requested**

On page 8, second full paragraph of Appellants Amendment, the Examiner was asked to identify where Yurek contained any disclosure which could be considered to be a "distributed fibre-optic sensor" as claimed in independent claim 1. The Examiner has failed to respond.

In the third full paragraph on page 8 of Appellant's Amendment, the Examiner was requested "to identify appropriate documentation establishing this mode of operation of the disclosed delay elements" in the Yurek reference, i.e., delay elements 10a. The Examiner has failed to respond.

The Examiner now alleges in the sentence bridging pages 2-3 of the Final, that the delay elements 10a "inherently" show a distributed fibre-optic sensor. The Examiner is again requested to identify any teaching in Yurek which supports her contention.

The multiple failures to provide any evidentiary support for the Examiner's interpretation of the Yurek reference are clearly reversible errors.

**D. Error #4 – The Examiner fails to apply current Federal Circuit and MPEP instructions as to the "effect of preamble"**

In the last full paragraph on page 3 of the Final Rejection, the Examiner cites a more than 55-year-old CCPA case as support for her conclusion that the limitations in the preamble can be disregarded. The Examiner's attention is directed to MPEP Section 2111.02 and its statement

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that “any terminology in the preamble that limits the structure of the claimed invention must be treated as a claim limitation” with the MPEP citing the appropriate *Corning Glass Works* decision of the Federal Circuit. In independent claim 1, a “fibre-optic sensor array for a surveillance system” is disclosed, thereby clearly indicating that the subsequently recited structure must be combined in a “sensor array for a surveillance system.” The Examiner has simply misstated the position of the MPEP and the Federal Circuit, and this misapplication of the law is reversible error.

**E. Error #5 – The Examiner fails to establish where the Yurek reference anticipates the three claimed structures of independent claim 1**

Claim 1 requires “at least two fibre-optic point sensors” and “a distributed fibre-optic sensor linking said at least two fibre-optic point sensors.” Because the Examiner cannot articulate where or how Yurek discloses a “distributed fibre-optic sensor” or one where it connects two point sensors, she cannot meet her burden of proof that all claim 1 elements are disclosed in the Yurek reference. This failure to prove comprises reversible error.

**F. Error #6 – The Examiner fails to establish where the Goldner reference anticipates the three claimed structures of independent claim 1**

The Examiner in the Final Rejection cites a new reference, Goldner, as allegedly anticipating the subject matter of the claims. However, Goldner, like Yurek, discloses a series of point sensors which are multiplexed to an acoustic receiver 120. As stated in Goldner, the “predetermined interval between [Bragg] gratings 32 (Fig. 2) becomes the hydrophone length 33” and “[t]he length of optical fiber between each fiber Bragg grating is an individual sensing element 55.” (Paragraph 0056). As a result, Goldner teaches only the connection together of fiber-optic point sensors, but only through “substituting rings of low shear or high loss material

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25" as shown in Figure 2A and not the claimed "distributed sensor." Again, the Examiner is queried as to where there is any disclosure of a "distributed fibre-optic sensor" as required by Applicants' independent claim 1 or the interrelationship between the sensors such that the distributed fibre-optic sensor links at least two fibre optic point sensors.

The Examiner fails to indicate how or where Goldner discloses the structures recited in independent claim 1 or the claimed interrelationship between those structures. The Examiner's failure is reversible error.

**G. Error #7 – The Examiner's "Official Notice" is not timely and therefore respectfully traversed**

Applicants' pending claims 11, 13 and 14 are as originally submitted and yet in the first action, the Examiner neglected to allege any Official Notice and thus the rejection is not timely.

Additionally, the Examiner's attention is directed to MPEP Section 2144.03(c) which states that "if applicant challenges a factual assertion as not properly official noticed or not properly based upon common knowledge, the examiner must support the finding with adequate evidence." Appellant traverses the allegation of Official Notice. Accordingly, the aspects noted in the "Official Notice" are not of record and cannot be relied upon by the Examiner as somehow meeting her obligation to establish a *prima facie* case of anticipation or obviousness.

**H. Error #8 – The Examiner admits that the features of claims 11, 13 and 14 are missing from the Goldner reference**

In view of the unsupported "Official Notice" noted above which has been traversed by Applicants, the Examiner's admission that Goldner does not teach "the pulsed reflectometric interferometric interrogation system and Rayleigh-backscatter interrogation system" is very much appreciated and is completely dispositive of the allegation that claims 11, 13 and 14 are obvious over the Goldner reference. If the cited reference does not teach structures and/or



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interrelationships recited in the claims, those claims cannot possibly be obvious. Accordingly, this obviousness allegation is reversible error.

### SUMMARY

The Examiner has misconstrued the language of claim 1 and ignored both the conventional definition of the claim terms as well as the definition in the specification. She has misunderstood and misstated the "coil delay element 10a" in the Yurek reference which has nothing to do with a "distributed sensor." She has failed to respond to numerous inquiries as to where purported teaching exist in the Yurek reference. The Examiner has failed to apply modern Federal Circuit precedent and instead relies upon 55 year old CCPA case law. Because neither Yurek nor Goldner teach the claimed "distributed fibre-optic sensor" or its claimed "linking" of the at least two "point sensors," there can be no anticipation of claim 1 or claims dependent thereon. The Examiner's Official Notice is not timely and, in any event has been traversed.

As a result of the above, there is simply no support for the rejection of Applicants' independent claim 1 or claims dependent thereon under 35 USC §102 and/or §103. Applicants respectfully request that the Pre-Appeal Panel find that the application is allowed on the existing claims and prosecution on the merits should be closed.